

**St. John's Hospital and United Association of Journeymen and Apprentices of the Plumbing and Piping Industry of the United States and Canada, Plumbers' Local No. 137, Petitioner. Case 33-RC-3610**

May 29, 1992

**DECISION ON REVIEW AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT  
AND RAUDABAUGH

On December 4, 1991, the Board granted the Employer's request for review of the Regional Director's Decision and Direction of Election, and its request for stay of election, as it raises substantial issues warranting review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Based on a careful review of the record, the Board concludes that the Regional Director erred in finding that a residual unit consisting of all unrepresented skilled maintenance employees, i.e., maintenance mechanics, power plant operators, and incinerator operators, is an appropriate unit for collective bargaining.

The Regional Director found that the unit sought by the Petitioner, consisting of all regular full-time and part-time maintenance mechanics of the Employer, is not appropriate under the Board's newly promulgated Health Care Rule (Rule)<sup>1</sup> because it might cause undue proliferation of units at the Employer's acute care hospital.<sup>2</sup> Instead, the Regional Director found that the only appropriate unit under the Board's Rule is a residual unit of maintenance mechanics, power plant operators, and incinerator operators.

Since the 1940s, for employees in its maintenance and repair department, the Employer has voluntarily recognized five units represented by five separate labor organizations. Carpenters' Local No. 16 represents 1 foreman and approximately 5 carpenters and 10 temporary carpenters. Painters' Local 90 represents one foreman painter and approximately three painters and two temporary painters. IBEW Local No. 193 represents one foreman electrician, approximately seven electricians, one senior biomedical technician, and five biomedical technicians. IBEW Local No. 399 represents approximately two communications technicians. Petitioner represents one plumber foreman, one plumber, and two refrigeration people. The collective-bargaining agreement between the Employer and Petitioner commenced April 1, 1990, and expires March 31, 1993. None of the other labor organizations seeks

to represent the maintenance mechanics, and there is no history of collective bargaining within the petitioned-for unit of maintenance mechanics. All employees in the Employer's maintenance and repair department are represented in the aforementioned five units, except for approximately 4 power plant operators and 2 incinerator operators and the petitioned-for unit of approximately 12 maintenance mechanics.

The Board's Health Care Rule provides that, except in extraordinary circumstances or where there are existing nonconforming units, the following units are appropriate:

1. All registered nurses.
2. All physicians.
3. All professionals except registered nurses and physicians.
4. All technical employees.
5. All skilled maintenance employees.
6. All business office clerical employees.
7. All guards.
8. All nonprofessional employees except for technical employees, skilled maintenance employees, business office clerical employees, and guards.

Where there are existing nonconforming units, the Rule provides that the Board will find appropriate only units which comport, insofar as practicable, with these units.

The Regional Director found that the maintenance mechanics as well as the power plant operators and incinerator operators are skilled maintenance employees. Because the Employer has already recognized five separate units of skilled maintenance employees, the Regional Director found that a sixth nonconforming unit consisting only of maintenance mechanics might cause undue proliferation of units because the remaining skilled maintenance employees—power plant operators, and incinerator operators—might seek representation in a seventh nonconforming unit. Accordingly, the Regional Director found that the only appropriate unit which comports with the Rules, so far as is practicable, is a residual unit of all remaining unrepresented skilled maintenance employees—maintenance mechanics, power plant operators, and incinerator operators. In doing so, the Regional Director found that the unrepresented employees share a community of interest shared by all skilled maintenance employees.

The Employer, in its request for review, contends that the petition should be dismissed to avoid unit proliferation. Relying on *Levine Hospital of Hayward*, 219 NLRB 327 (1975), the Employer argues that because there is a close community of interest between the petitioned-for employees and employees in the existing plumbers' unit, i.e., the one represented by Petitioner, it is inappropriate to create a sixth unit of skilled main-

<sup>1</sup> 284 NLRB 1596-1597.

<sup>2</sup> The Regional Director found that the Employer is an acute care hospital within the meaning of Sec. 103.30 of the Board's Rules and Regulations.

tenance employees, although the Board could entertain a timely petition seeking to add the unrepresented skilled maintenance employees to the Petitioner's existing skilled maintenance unit through a representation election or accept a petition to represent these employees as part of an overall skilled maintenance unit.

We agree with the Regional Director that the petitioned-for unit which includes only a portion of the remaining unrepresented skilled maintenance employees is inappropriate inasmuch as the Board requires that all unrepresented employees residual to the existing unit or units be included in an election to represent them.<sup>3</sup> However, we also find that in the circumstances presented here, because the Petitioner already represents a nonconforming unit of skilled maintenance employees, if the Petitioner seeks to represent any of the remaining unrepresented skilled maintenance employees, the Petitioner must represent all the remaining skilled maintenance employees as part of its existing unit of plumbers and refrigeration employees. Even in representation cases which do not involve health care facilities, the Board has long held that it will not entertain an incumbent's petition for a separate residual

unit. *Budd Co.*, 154 NLRB 421, 428 (1965). See also *McKeesport Hospital*, 220 NLRB 1141 (1975). Rather, an incumbent wishing to represent employees residual to those in its existing unit must do so by adding them to the existing unit, usually by means of a self-determination election. We see no reason to depart from this precedent in the face of the intervening Rule, particularly because the Rule explicitly seeks to avoid undue proliferation of units. We find that here, in the face of existing nonconforming units, the conformance, "insofar as practicable," to the units set forth in the Rule means adding employees to an existing unit rather than creating a sixth unit.

Accordingly, we will remand this case to the Regional Director for direction of a self-determination election, if Petitioner desires, to have the maintenance mechanics, power plant operators, and incinerator operators vote on whether or not they wish to be a part of the unit of plumbers and refrigeration employees the Petitioner already represents.

#### ORDER

The decision of the Regional Director is reversed and the matter remanded to him for further appropriate action in accord with this decision.

<sup>3</sup>*Armstrong Rubber Co.*, 144 NLRB 1115, 1119 fn. 11 (1963); *American Radiator Corp.*, 114 NLRB 1151, 1154-1155 (1955).